

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RAYSHAN WATLEY

Case No. 2007-03978-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

FINDINGS OF FACT

{¶1} 1) Plaintiff, Rayshan Watley, an inmate incarcerated at defendant's Southern Ohio Correctional Facility ("SOCF"), stated all his personal property was deliberately thrown away by SOCF employee, Gregg Miller, on October 13, 2006. Plaintiff explained some of his property items were replaced, but defendant refused to replace a large amount of his property consisting of legal material, two law books, fifty-two pictures, a pair of reading glasses, four deodorants, twenty envelopes, four tubes of toothpaste, four bottles of Muslim oil, six bottles of vitamins, and two pairs of shower shoes.

{¶2} 2) Plaintiff implied his property was discarded without any authorization on the part of defendant. Plaintiff filed this claim requesting the property claimed be replaced. Payment of the filing fee was waived.

{¶3} 3) Defendant acknowledged plaintiff's "property items were placed into a plastic garbage bag which was inadvertently thrown away by the inmate porter." Defendant related attempts were made to replace plaintiff's property including the replacement of commissary items, hygiene articles, and legal materials. Defendant explained when efforts were made to provide plaintiff with copies of legal material he chose to destroy the provided copies. Defendant denied liability in this matter based on

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the contention that plaintiff did not suffer any damages due to the fact all his discarded property was replaced.

{¶4} 4) When plaintiff's property was thrown away on or about October 13, 2006, he was housed in the J-1 cell block of SOCF. Defendant noted inmates housed in J-1 are subject to severe property restrictions which "includes minimal hygiene articles, current legal materials, and approved religious items." Defendant insisted all of the property plaintiff possessed while housed in J-1 was subsequently replaced.

{¶5} 5) Plaintiff filed a response contending not all of the discarded property items were replaced by defendant. Plaintiff denied destroying any legal materials returned to his possession. Plaintiff reasserted that the property claimed in his complaint was not replaced, including legal materials, two law books, fifty photographs, a pair of reading glasses, four deodorants, twenty envelopes, four tubes of toothpaste, four bottles of Muslim oil, six bottles of vitamins, and two pairs of shower shoes.

{¶6} 6) On January 17, 2008, plaintiff filed a letter proposing a settlement of his case for \$300.00. A settlement cannot be considered unless both parties agree to the terms of the settlement.

{¶7} 7) On January 24, 2008, defendant submitted a copy of a letter sent to plaintiff rejecting plaintiff's settlement offer.

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{¶8} 8) On January 28, 2008, plaintiff filed a motion for proposed settlement. Plaintiff proposes the same terms for a settlement agreement which has already been rejected by defendant. Accordingly, plaintiff's motion is denied.

CONCLUSIONS OF LAW

{¶9} 1) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD.

{¶10} 2) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD.

{¶11} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD.

{¶12} 4) Plaintiff's failure to prove delivery of legal papers and other claimed unreplaced property items to defendant constitutes a failure to show imposition of a legal bailment duty on the part of defendant with respect to lost property. *Prunty v. Department of Rehabilitation and Correction* (1987), 86-02821-AD. Consequently, plaintiff's claims for these items are denied.

{¶13} 5) Plaintiff has no right to pursue a claim for property in which he cannot prove any rightful ownership. *DeLong v. Department of Rehabilitation and Correction* (1988), 88-06000-AD.

{¶14} 6) In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82, 53 O.O. 25, 118 N.E. 2d 147.

{¶15} 7) This court has previously held that property in an inmate's

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possession which cannot be validated by proper indicia of ownership is contraband and consequently, no recovery is permitted when such property is lost or destroyed. *Wheaton v. Department of Rehabilitation and Correction* (1988), 88-04899-AD. Consequently, plaintiff's claims for listed property items are denied since he has failed to offer sufficient proof to show he owned these articles.

{¶16} 8) The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The trier of fact does not find plaintiff's assertions persuasive regarding defendant's alleged failure to replace all his discarded property.

{¶17} 9) Plaintiff has failed to prove, by a preponderance of the evidence, he suffered any loss as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Plaintiff's motion for a proposed settlement is DENIED. Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
1/16
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